

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 489612 MERCHANT MARINER'S DOCUMENT
Issued to: ORVAL J. BROMAN Z 473-24-6341-D2

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2281

ORVAL J. BROMAN

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 28 January 1980, an Administrative Law Judge of the United States Coast Guard at St. Louis, Missouri, admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as Master on board the United States M/V W.W. HOLLOWAY under authority of the license above captioned, on or about 17 September 1979, Appellant departed the port of Milwaukee, WI, for Chicago, IL, and traversed Lake Michigan without the required licensed personnel aboard as required by the vessel's certificate of inspection, to wit: the vessel sailed without the second mate having the proper endorsement to be a first class pilot upon Lake Michigan.

The hearing was held at Chicago, IL on 18 October 1979.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of one witness and three documents.

The Appellant did not testify, call witnesses or introduce any documents.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order of admonition on Appellant.

The entire decision was served on 28 January 1980. Appeal was timely filed on 13 February 1980 and perfected on 17 June 1980.

Because of the disposition of the appeal no Findings of Fact are necessary.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that: (1) the findings of fact and conclusions of law are in error and unsupported by the evidence; and, (2) the Administrative Law Judge erred in not granting Appellant's Motion to Dismiss on the grounds that the specification does not fall within the scope of the definition of misconduct as set forth in the regulations 46 CFR § 3.05-20(g)(1).

APPEARANCE: Thompson, Hine & Flory, Cleveland Ohio, by Richard C. Binzley.

OPINION

I

During the presentation of the Coast Guard case a witness testified that upon boarding the W.W.HOLLOWAY, while it was tied up at a pier in Chicago, he noticed the lack of an endorsement for "Lake Michigan waters" on the second mate's First Class Pilot License. Further testimony indicated that the witness had no knowledge of who maneuvered the vessel from Milwaukee to Chicago. The three documents submitted consisted of the second mate's license, excerpts from the vessel's log and a copy of the vessel's shipping articles.

An initial question arises as to whether the Appellant was acting under the authority of his license at the time of the voyage in question. Section 5.01-35 of Title 46, Code of Federal Regulations, provides that:

"A person employed in the service of a vessel is considered to be acting under the authority of a license certificate or document held by him either when the holding of such license, certificate or document is required by law or regulation or is required in fact as a condition of employment."

In the instant case no certificate of inspection for or description of the W.W. HOLLOWAY was introduced into evidence. Without such evidence no finding can be made that Appellant was required by law or regulation to have a license. Likewise, no evidence was produced respecting a requirement of holding the license as a "condition of employment." It is clear Appellant holds a license, however, that fact alone has not been held sufficient to establish the essentials of jurisdiction. See, e.g. Decisions on Appeal Nos. 2104, 2169.

Another omission in the Coast Guard case also exists. The

Investigating Officer failed to recognize that the lack of an endorsement on the second mate's license was not a violation of the manning requirements established by a vessel's certificate of inspection. Accordingly, a violation could not be found based solely upon discrepancies between a vessel's certificate of inspection and the vessel's Shipping Articles. Given the nature of the charge and specification it was necessary for the Investigating Officer to establish that the second mate piloted the vessel on Lake Michigan when he, in fact, did not have the proper endorsement for those waters. The excerpts from the vessel's log and the testimony of the one witness did not offer substantial evidence on this point. Accordingly, the record fails to establish a prima facie case.

Manning requirements for vessels on the great Lakes (vessels inspected and certificated for "Great Lakes" routes only) are determined under the authority of R. S.4463 (46 USC 222). Administrative practice has been to require the customary "master" and "three pilots" under the authority of the above statute, recognizing that such determinations are subject to the three watch law (46 USC 673).

While the Investigating Officer established that the second mate did not have a proper endorsement for Lake Michigan, this alone would not establish a prima facie case. The second mate did hold a First Class Pilot's License. Assuming the Certificate of Inspection of the W.W. HOLLOWAY (if one was required) mandated a master and three first class pilots the evidence produced showed no violation of such a certificate. Moreover, as no evidence was produced as to who controlled the vessel, it is conceivable that, with a proper management of watches, there was a pilot on watch with the required endorsement for all waters the vessel navigated. In order to establish misconduct in the instant case the Investigating Officer had to establish that the vessel on its voyage from Milwaukee to Chicago was under the control of the second mate. As stated above no such showing was made.

CONCLUSION

Since jurisdiction in this case has not been established and no evidence has been presented to establish that the second mate piloted the vessel, the charge and specification must be set aside.

ORDER

The order of the Administrative Law Judge dated at St. Louis, Missouri, on 28 January 1980, is VACATED. The charges are DISMISSED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 16 day of Aug 1982.